IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 17 OF 1989

The State of Maharashtra ...Appellant.

V/s

Vasudeo Dila Patil,
R/o. 44-C,
Mandar Co-op. Society,
Near Kora Kendra,
Borivli (West),
Bombay - 400 092. ...Respondent.
(Original Accused)

Mr. A.M. Shringarpure for the appellant.

Mr. Prakash Naik for the respondent.

CORAM: V.M.KANADE,J.

DATE: 14th September, 2004.

ORAL JUDGMENT:

1. The State has preferred this appeal against the Order of acquittal passed by the Special Judge for Greater Bombay in Special Case No.35 of 1987 whereby the Trial Court acquitted the accused of the charges framed against him by the Judgment and Order dated 29/9/1988.

2. The respondent - accused was charged under section 161 of the Indian Penal Code and section 5(2) read with section 5(1)(d) of the Prevention of Corruption

Act on the allegations that he had demanded bribe of Rs 1500/- from the complainant for transferring Gala No.39 in the name of his second wife. The prosecution's case is that for the aforesaid purpose, he had accepted an amount of Rs 1000/- on 5/5/1986. The prosecution's case is that the Complainant was using Gala Nos. 39 and 40 in D.N. Nagar, Municipal Market. Gala No.40 stood in the name of the Complainant. Stall No.39 stood in the name of Jayashree, the first wife of the Complainant and after Jayashree left, the Complainant got married to Surekha and he wanted Gala to be transferred in the name of Surekha. It is an admitted position that there were arrears of rent to be paid to the Corporation in respect of Gala No.39 and that Surekha had paid those arrears on 26/1/1986. A receipt to that effect was issued. The respondent - accused informed Surekha that the Gala could be transferred in her name and, for that purpose, demanded bribe of Rs 1500/-. An amount of Rs 1000/- was to be paid on 5/5/1986. The Complainant, thereafter, recorded a complaint with the Anti-Corruption Bureau who made careful preparations for conducting raid for the purpose of catching the accused raid handed in the process of accepting the bribe. The raid was conducted and the money was handed over to the accused. However, he threw the

money on the floor when he saw that some persons were rushing towards the Office. Anthracene powder was seen on the palm of both of his hands. A charge-sheet was filed. The prosecution adduced the oral and documentary evidence. The Trial Court, however, by Judgment and Order dated 29/9/1988 acquitted the accused of the charges frames against him. Against the said Judgment and Order, the State has preferred this appeal against acquittal.

3. I have heard the learned counsel appearing on behalf of the State as also the respondent at length. I am unable to accept the submissions made by the learned Counsel appearing on behalf of the appellant - State that the finding of the Trial Court should be set aside and the accused should be convicted under the provisions of Prevention of Corruption Act. The prosecution has examined in all 9 witnesses. I have perused the evidence adduced by the prosecution and from the evidence of the Complainant, it appears that some proceedings were initiated against the Complainant and a notice was pasted on Gala No.40 on 5/1/1986. The second notice was pasted on 11/1/1986 and, thereafter, notices were pasted each month upto March, 1986. These notices were regarding arrears of rent. An application was made by the Complainant that

he be allowed to retain the Gala. He was dispossessed of Gala No.40 and, thereafter, he was directed to pay all rental arrears as well as restoration charges which were paid by him by 18/4/1986. The Complainant has admitted in his evidence that so far as Gala No.39 is concerned, the said Gala was not transferred in the name of his second wife immediately and, therefore, he was verymuch annoyed with the accused and, therefore, he lodged a complaint. From the evidence of Complainant, the Trial Court has come to the conclusion that the Complainant was annoyed with the accused since he did not act as per his wishes. From the evidence, it is clear that the accused had joined in January 1986 and had started taking steps of issuing notices for arrears of rent which was part of his official duty. The Trial Court, therefore, came to the conclusion that the evidence of the Complainant could not be relied on its entirety without independent corroboration. In my view, no fault can be found in the said finding. So far as Surekha - P.W.4 is concerned, who is a second wife of the Complainant, her evidence also does not inspire any confidence. She has initially deposed that she had paid an amount of Rs 62/- to the accused towards the rent of Gala No.40. However, a receipt was not given to her. When she was confronted with the receipt at

Exhibit-10, she has stated that she could not read it and admitted that she had told the police that a receipt for Rs 186/- was issued by the accused. From her evidence, several omissions and contradictions are brought on record. Further from her evidence, it has come on record that the accused had fined her on number of occasions. The Trial Court has held that merely because the accused had fined Surekha on number of occasions, it cannot be said that it reflected the state of mind of the accused to prepare a ground for asking bribe. Apart from that, the demand and acceptance also has not been proved from the evidence of the Complainant and the other witnesses. The money was found on the floor. Apart from the fact there is a conflict in the evidence regarding the place where the accused was standing when the money was paid, the panch witnesses also do not appear to be an independent witnesses. The Trial Court has, therefore, not entirely relied upon the evidence of the Complainant and has come to the conclusion that there is no independent corroboration to his evidence. The view taken by the Trial Court, therefore, is a reasonable view and there is, therefore, no reason to set aside the said findings or conclusions arrived at by the Trial Court. There is no ground made out for interfering with the findings of the Trial Court.

4. Appeal is, therefore, dismissed. Order of the Trial Court is confirmed.

V.M. KANADE, J.